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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 August 1990, at 10 a.m.

Chairman: Mr. TÜRK

later: Mr. HATANO

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Protection of minorities (continued)

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The meeting was called to order at 10.20 a.m.

PROTECTION OF MINORITIES (agenda item 18) (continued) (E/CN.4/Sub.2/1990/46; E/CN.4/1990/41; E/CN.4/Sub.2/1989/43)

1. The CHAIRMAN, reporting on the conversation that he and the Chairman of the Working Group on Indigenous Populations had had with the Permanent Representative of Canada, said that the latter had indicated that his Government had confirmed the signing of an agreement between Canada, Quebec and the representatives of the Mohawk communities with a view to negotiations. The agreement provided in particular for the presence, during the negotiations, of a team of 24 observers appointed by the International Federation of Human Rights. The text of the agreement would be made available to members of the Sub-Commission in the course of the morning. The Canadian Government had also decided to keep the Secretary-General, the Chairman of the Sub-Commission and the Chairman of the Working Group on Indigenous Populations informed of the situation.

2. Mr. SACHAR said that, according to a report in the International Herald Tribune, the disturbances in question were continuing, the police were using tear-gas and people had been injured. He, therefore, wanted further information on the situation.

3. The CHAIRMAN recalled that the Canadian Government had undertaken to keep the Sub-Commission informed.

4. Mr. ALFONSO MARTÍNEZ welcomed the agreement mentioned by the Chairman; it showed both the difficulties that indigenous peoples might face and the possibility of resolving disputes through negotiations. The incident in question also demonstrated that the Sub-Commission could be both cautious and effective and that it could achieve results without being unduly hasty.

5. Mr. SADI associated himself with Mr. Alfonso Martínez and congratulated the parties to the incident who had opted for negotiation.

6. Mr. KHALIFA stressed the importance of the item under consideration. Nowadays minorities were rising up in the name of human rights, the defence of which afforded human rights bodies an opportunity to intervene in the affairs of States for a purpose which might not always be praiseworthy. Therefore, an enormous responsibility was being placed on Mr. Eide, whose study would be of great importance.

7. Conflicts involving minorities had previously been rather rare largely because of the political systems in force, for example in the USSR. Now the national minorities in that country were awakening and Armenia and Izerbaijan, for example, were in dispute over the small, but now famous enclave of Nagorno Karabakh; in Yugoslavia, the federal system was at risk; in Bulgaria, minorities were remembering their Turkish ancenstry; and in China, there were said to be 50 million Chinese Muslims.

8. Noting that in the Soviet Union numerous minorities favoured secession, he said that, while all empires came to an end, the question for the Sub-Commission was to what extent minorities had the right and the capacity to dismantle a State. For international law and the principles of the international community to prevail, the prime requirement was respect for the

principle of equality, since it was when populations were deprived of their rights, especially their economic rights, that the desire for separation manifested itself most strongly. A minority which had no reason to consider itself economically disadvantaged was less inclined to claim autonomy or reunion with its country of origin.

9. The world was entering a critical period where it would be necessary, in order to avoid chaos, to determine clearly the rights of peoples and States and to recognize the right of minorities to be protected against discrimination. The question was a very complex one and it was extremely difficult to formulate general rules; that was why the forthcoming study by Mr. Eide and the proposed case studies were so important. The study in question would be therapeutic and not solely theoretical. It should go beyond the earlier studies and identify the points common to the various minorities in order to establish outlines, pending the formulation of a real body of law on minorities. It should also clarify what minorities wanted and ascertain whether their demands related to the management of property, equality, recognition to minorities of the same rights as to other citizens, cultural or religious identity, etc. Those demands could, however, be very diverse and aim, for example, at consolidating or, on the contrary, eliminating differences, and the solutions might be contradictory.

10. It remained to find an appropriate methodology for the study. While Mr. Eide's progress report (E/CN.4/Sub.2/1990/46) mentioned, in its ninth paragraph, only a few guiding principles which were far from sufficient, he was sure that the right method would be found.

11. Mr. Hatano took the Chair.

12. Mr. SADI thought that item 18 was perhaps the most important on the entire agenda and closest to the Sub-Commission's initial mandate as expressed in its title. In approaching the study with which he had been entrusted from the standpoint he had chosen, Mr. Eide had undertaken something of an impossible mission: he said at the beginning of his progress report that the purpose of the study was primarily pragmatic and that the need was to find solutions rather than to define the rights of minorities, but was the one really possible without the other? Mr. Eide came up against that question no later than in paragraph 2 of his report, where it became clear that minority rights must be defined, and the problem continued to face him throughout the document. He himself believed that rights must be discussed, but that raised the question whether the proper course was to accentuate the differences which made a minority a minority or, on the contrary, to try to eliminate them? The first option was, in his opinion, a source of strife and dissension and it was preferable to reduce the differences and focus on what united people rather than on what divided them.

13. The "melting pot" scheme in the United States was very interesting in that regard and had produced good results, whereas the contrary experiment - separate schools for white children and black children, for example - had yielded bad results, and permanent friction existed wherever there were Latin American Black, Italian or other ghettos. It was, therefore, necessary to recognize rights to minorities, but those rights must fit within the broader context of the general interest. There must be protection for minorities, but within reasonable limits, since excesses caused setbacks. For example, in Jordan, by seeking to ensure the representation of the Christian

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and Circassian communities during the recent elections, the principle of universal suffrage had in fact been infringed, as the majority had been under represented. He considered it preferable to promote the citizens of a country as such and not as members of a minority.

14. The question of the determination of the rights of minorities was, however, linked to that of the definition of minorities. There were in fact several categories of minorities and, consequently, different kinds of rights and, in his opinion, the rights of settled minorities differed from those of immigrants. The latter should agree to become an integral part of the country which welcomed them and acquire a new identity. Those who were not prepared to do so and wished to conserve a separate identity should not emigrate. The rights of minorities could therefore be defined only in the light of the minority concerned, in other words, whether it was a settled minority or comprised immigrants or migrant workers, it being understood that all minorities should in general be treated on an equal footing.

15. With regard to the method proposed by Mr. Eide to collect information on the experience of countries, he doubted that asking States to answer a questionnaire was the best solution. It was rare that Governments admitted their errors and were totally sincere. In his view, a more detailed study carried out by university Professors or humanitarian organizations would give a more precise picture of the situation.

16. Lastly, he thought that the Sub-Commission should examine more particularly the situation of the Arab minority in Israel. The members of that minority were treated as second class citizens at all levels, and the massive influx of Jews from, for instance, the USSR, into regions where those Arab populations lived was only aggravating the problem. For its part, the Muslim Turkish community in Bulgaria should, with the advent of democracy in that country, have more chance henceforth of exercising its religious, linguistic, and cultural rights. The Sub-Commission should however, be able to obtain more information on its fate.

17. Mrs. WARZAZI stressed that, as the problems which still surrounded the elaboration of a draft declaration on the rights of minorities showed, protecting minorities was a difficult business. The situation of minorities had worsened recently with the resurgence of long-latent nationalism. No pretext was too slim when the aim was to rekindle the fires of hatred, and without serious action by Governments many parts of the world would become unliveable for minorities.

18. The progress report by Mr. Eide was therefore particularly timely and the rapporteur was to be congratulated on his excellent work. She wished to stress at the outset that she agreed fully with Mr. Eide concerning the needs for caution and realistic assessment of concrete situations. Mr. Eide rightly stressed the difficulty of defining the term "minorities", but she wondered whether it was not somewhat premature to opt for the term "ethnic", which Mr. Eide considered more positive, but which must also be defined. She also shared the view that article 27 of the International Covenant on Civil and Political Rights should constitute the point of departure for the protection

of a range of rights, as had been the case with other provisions of the Universal Declaration of Human Rights or of the International Covenants on Human Rights which had been the basis for the elaboration of declarations or conventions designed to protect marginal or vulnerable groups such as women, children or the mentally ill.

19. It was obvious that the road to the solution of the problems of minorities must not lie through assimilation. However, it must not be forgotten that in its resolution 1988/36 the Sub-Commission had reaffirmed "the basic importance of sovereign equality, and the inviolability of the national unity and territorial integrity of States". Regarding autonomy, she shared the views expressed in paragraph 22 of Mr. Eide's report, since autonomy implied, in the case of indigenous populations, taking account of their size and of the territories belonging to them. The Special Rapporteur's task was further complicated by the fact that he would have to determine whether new groups of immigrants should be considered conventional minorities. Lastly, she noted that from paragraph 35 of his report onwards Mr. Eide referred solely to ethnic groups and ethnic conflicts; however, there were throughout the world serious conflicts involving religious minorities, and that aspect of the problem should not be neglected.

20. The solution to the minority problem must be based on three indispensable conditions, namely the political will of the State having minorities; the will of the various communities to live together in peace and harmony, and consequently, to get to know and respect one another; and the co-operation and positive assistance of the State which felt itself concerned by a minority problem even though it was not the State in which the minorities lived.

21. The solutions proposed should take into consideration the characteristics of each minority group and respect the inviolable principles of the effective exercise of human rights, the guarantee of equal treatment and the acceptance and respect of the right to be different. In that connection, she said that, unlike Mr. Sadi, she thought that minorities should be able to retain their identity if they so wished. Integration did not mean assimilation, and exchanges between the majority population and minorities were of vital importance and helped to enrich all the communities concerned. That was possible if the authorities demonstrated the necessary political will, in which regard she mentioned the decision of the Canadian Government to authorize Sikhs who were members of the Canadian Mounted Police to wear beards, as their religion required.

22. Mr. DIACONU emphasized that the mandate contained in Sub-Commission resolution 1989/44 concerning the study on ways and means of facilitating the peaceful and constructive solution of problems involving minorities should be envisaged essentially from the standpoint of human rights and the specific rights of minorities rather than within the context of other situations. No account should be taken, for example, of the activities of separatist movements, unless they were linked to human rights.

23. Furthermore, it was impossible to deny that minorities existed in all countries, of whatever size. That existence should be established not by legislation or documents but according to objective criteria. However, given the difficulties of defining what was a "minority", that term should, as Mr. Eide proposed in paragraph 31 of his report be used in a wide sense, covering nationalities and ethnic groups in multinational States. It must not

be forgotten, however, that not all the States where there were minorities were multinational: Finland, the Federal Republic of Germany, Romania, Italy and Denmark did not qualify for that epithet, whereas the USSR, Yugoslavia and Czechoslovakia or outside eastern Europe, Nigeria, did, because they contained several different nations. As had already been pointed out, the concept of ethnic group was too restrictive, since account must also be taken of linguistic, cultural and religious factors. He also rejected use of the criterion of preponderance or non-preponderance to define minorities, since the real place of a group within a society was difficult to determine. Nor could he accept the idea expressed by Mr. Sadi that immigrants should renounce any national identity from the moment they were taken in by another country. In his opinion, they were perfectly entitled to preserve their separate identity.

24. In point of fact, the draft declaration being elaborated by the Sub-Commission placed greater stress on the identity of minorities than on their rights, unless those rights were the expression of that identity. The document recently adopted by a conference held at Copenhagen by the Danish Helsinki Committee and the Minority Rights Group contained three pages devoted to the question of the ethnic, cultural, linguistic and religious identity of national minorities; those pages could usefully be annexed to Mr. Eide's report.

25. To his mind, it was preferable to speak of specific rights, rather than special rights, of minorities: what was involved were not privileges, but rights taking account of the specificity and differences of minorities. In addition, he felt that the concept of collective rights mentioned in paragraph 12 of Mr. Eide's report was inapplicable: in municipal, as in international law, only individuals and legally constituted associations were subjects of law, and groups or minorities as such could not be. Moreover, the Copenhagen meeting had eschewed the expression "collective rights". It might be better to speak of individual rights which, by their very nature, could be exercised collectively. The additional rights listed in paragraph 21 of the progress report were not currently recognized, except for the right of minorities to be consulted regarding decisions, projects and programmes affecting them; the others were matters of administrative arrangements in the State concerned. It was important, however, to stress the right of minorities to participate on an equal footing with the other citizens in the cultural and social life of the country in which they lived and to be represented in the national parliament.

26. With regard to peaceful and constructive solutions, it was not certain that, as Mr. Eide implied, solutions had been found in countries where there was no conflict, for conflicts could be latent and come to the surface only when the minorities were genuinely able to express themselves and assert their rights. He agreed, however, that, as mentioned in paragraph 42 of the report, the rights and development of minorities should be promoted in a manner consistent with the unity, stability, territorial integrity and political independence of States, and that it must be ensured that members of minorities also respected and protected all individual human rights in relation both to their own members and to the members of the majority.

27. The solution to minority problems lay in any event through co-operation and permanent dialogue, with the support of government representatives, between the minority and majority groups in a country. Autonomy was sometimes difficult to accept, especially in countries where the minorities were dispersed over the national territory. Consideration must therefore be given to other solutions, such as participation by minorities in decision-making in order to further their integration without compelling them to accept assimilation.

28. The solutions referred to in Mr. Eide's report were not models in the strict sense of the term; the intention was merely to recommend to countries ways, such as the establishment of special institutions and procedures, in which they might resolve minority questions. Conflicts could become irrational, emotional and violent, and it was therefore important as a first step to establish or restore trust between the minorities and majority groups.

29. Mr. ILKAHANAF congratulated Mr. Eide on the quality of his progress report, which highlighted the complexity of the problems involving minorities. In his opinion, the study which Mr. Eide was going to undertake should stress the treatment given to minorities rather than their rights. It seemed more urgent to establish institutions capable of resolving minorities' problems and to develop procedures to achieve that result rather than to set forth their rights in a declaration.

30. With regard to the definition of minorities mentioned in paragraph 13 of the report, he noted that in paragraph (c) the criteria adopted was that of difference. According to Mr. Eide, there were three kinds of differences: ethnic or national, cultural, and religious. However, a good definition of minorities could not be based solely on those differences. He therefore invited Mr. Eide to study the African tribal system, in which he could find other differences that were not mentioned in his report, such as those relating to ancestry. In that connection, he said that in his own country, Somalia, which constituted a cultural and religious unit, there were tribal differences which caused serious difficulties from the standpoint of public order. Other countries were, each in their own way, in a similar situation. Those differences explained the fact that, as Mr. Eide stated in paragraph 31 of his report, all attempts to arrive at a definition had so far failed.

31. During the past 30 years, such differences had been the cause of serious conflicts, such as a civil war in Nigeria in the 1970s, massacres in Burundi and Kenya, and clashes between Somalians and Kenyans outside their country. Those conflicts had, moreover, been exploited by dictators seeking to impose their authority. He therefore requested Mr. Eide to examine those disputes in an attempt to obtain information on the causes and consequences of ethnic conflict (paras. 36 to 41 of the report). A detailed study of those causes would require, however, intensive research.

32. Like Mr. Eide, he thought that, having regard to the differences between the various minorities and the complexity of their situations, the international community should confine itself at the outset to a mere declaration of principles on possible solutions.

33. Mr. van BOVEN thanked Mr. Eide for his informative progress report, which should, as the Chairman had said, be seen within the context indicated by its subtitle, namely, the search for possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities.

34. With regard to the question put by Mr. Eide in paragraph 51 of the report whether a distinction should be made between categories of minorities, he was prepared to make suggestions, but not to lay down guidelines, as Mr. Eide requested.

35. As to the distinction made in paragraphs 33 and 34 between "settled" and "recent immigrant" minorities, he noted that the criteria adopted to define the former was long residence in the country concerned. He also observed that, unlike recent immigrants, settled minorities could acquire the nationality of the country in which they lived. The rights of "recent immigrants", a category of persons which included migrant workers, refugees, stateless persons, etc., were defined in various international instruments which already existed or were in process of elaboration. In the case of "settled" minorities, what mattered was the rights granted to them, while with regard to "recent immigrants", the main concern was to halt the discrimination to which they were subjected. However, there were cases, such as that of the Koreans in Japan, where a minority which had lived in a country for a long period of time and therefore belonged to the "settled" category did not enjoy the local nationality. Then the criterion of citizenship or nationality was not involved. In point of fact, citizenship and State were only recent concepts in international law.

36. Referring to paragraph 33 of the report, he stressed that it was essential not to confuse country and State. There was, for example, in Belgium a German-language minority which, although long-established in its area of residence, had not lived long in Belgium, the definitive borders of which had been set barely 60 years previously. In the Netherlands, some of the "recent immigrants" from Morocco and Turkey had acquired Dutch nationality, while others had not. Nevertheless, they all belonged to the same culture and continued to speak their language and to practise their religion. It would therefore be more judicious to use the criteria of language or culture in order to define the various kinds of minorities rather than the concepts of State or citizenship, which were recent in origin. In that connection, he wondered, with regard to the two-part questionnaire proposed by Mr. Eide in annex I of his report, to what extent the questions concerning settled minorities were not applicable to recent immigrants.

37. With regard to minorities whose territory was traversed by a frontier, he agreed with Mr. Eide (para. 39 of the report) that minorities whose members lived in several different countries posed risks to regional security.

38. There was a need to spell out the role the international community should play in preventing the outbreak or spread of conflicts involving minorities. At the Sub-Commission's previous session, the International Federation of Human Rights had referred to the session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, held at New York, during which many States (Belgium, Czechoslovakia, German Democratic Republic, Germany, Federal Republic of, Italy, Japan, New Zealand, Spain and USSR) had submitted suggestions on the role that the United Nations could play as a mediator in such conflicts. The opinion of an outside authority could help to resolve a conflict, as the Sub-Commission had seen when it had considered the case of the Mohawks in Canada. He drew Mr. Eide's attention to the importance of that possibility in connection with the search for peaceful and constructive solutions.

39. The provisions of article 27 of the International Covenant on Civil and Political Rights concerning minorities, which were frequently described as "minimum" standards, could be interpreted in a very broad manner. He referred to the decision adopted on 26 March 1990 by the Human Rights Committee concerning the case of the Lubicon Lake Band to show that the provisions of article 27 could give rise to a very audacious interpretation: according to the Committee, the rights protected by article 27 included the right of persons, in community with others, to engage in economic and social activities which were part of the culture of the community to which they belonged.

40. Lessons should be drawn from the failures of certain protective treaties referred to in paragraph 28 of Mr. Eide's report. In particular, thought must be given to the question why the protection system set up at the time of the League of Nations had not been more effective.

41. The list of sources of information contained in paragraph 45 of the progress report included the reports submitted to the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, but omitted the reports submitted to the Committee on Economic, Social and Cultural Rights. He agreed with Mrs. Warzazi that, while linguistic and ethnic minorities had received a good deal of attention, religious minorities had not aroused the interest they deserved.

42. The measures mentioned in the report as having been taken to protect recent immigrants against racial discrimination were welcome, but racial discrimination was not the only form of discrimination to which that minority was subjected.

43. Mr. Turk resumed the Chair.

44. Mrs. PALLEY congratulated Mr. Eide on his excellent progress report and expressed the hope that, in order to be able to carry out the detailed study entrusted to him, Mr. Eide would be given the assistance of experts in constitutional, municipal and international law and the necessary financial resources. She also hoped that he would not limit his study to the rights granted to minorities in international instruments and in positive municipal law, but would also review the effective measures taken in the matter by various countries and national institutions and that he would not consider merely certain categories of minorities or certain rights, but would also take account of the political and moral aspects of the question.

45. It was important not to be unduly idealistic and consider any attempt at assimilation as necessarily good. A policy of forced assimilation could have disastrous effects, even in the absence of an authoritarian régime. Rather than attempting to mix all ethnic groups as in a "melting pot", she believed that an effort must be made to preserve individuals' right to freedom of expression. There should also be detailed study of the concept of autonomy: self-determination, which could prove dangerous if it remained external, could be very fruitful if it resulted in participation in internal affairs. In that regard, she was pleased to note that article 7 of the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities mentioned such participation.

46. She appealed to the United Nations human rights monitoring bodies not to confine themselves to defining the rights of minorities but to be concerned also with the moral and political principles which must be taken into consideration in the search for acceptable solutions. She noted with satisfaction in that regard that article 7 (b) of the draft declaration referred to "national policies and programmes".

47. She called on the Sub-Commission not to devote too much time to defining the concept of "minorities", for the United Nations had already been seeking such a definition for some 15 years without success. Everyone knew, in fact, what the concept covered, and it was preferable to tackle essential problems.

48. She agreed with Mr. Khalifa that the purpose of the study entrusted to Mr. Eide was to collect wider information on the measures successfully adopted by countries faced with similar difficulties, and not to seek a model solution. Measures which had proved their value in one country could usefully be adapted by other States to their particular situations. For measures to be cited as examples by a United Nations body would give them particular importance and authority. Advantage should be taken of the existence of the advisory services by transmitting to them the studies on successful national endeavours that might be of help to other countries.

49. Mr. GUISSE observed that, while it had never defined the concept of minorities, the international community had long been concerned with the protection of such groups. The lack of a definition, however, made the protection rather uncertain and there were at present few minority groups which could usefully invoke the prerogatives and rights recognized to minorities by the international community: it seemed difficult to ensure in domestic legal systems effective protection of the groups of people covered by the existing international instruments. The pursuit of Mr. Eide's study would thus unquestionably be one of the most important tasks of the Sub-Commission and the Commission on Human Rights in the years to come.

50. Mrs. Palley had done well to draw attention to the contents of articles 6 and 7 of the draft declaration on the rights of minorities, for providing a definition of minorities was not enough; the most important thing was to protect minorities and to ensure their participation in economic, social, political and cultural life. To that end, minorities must be involved in the decisions by the central authorities that concerned them, i.e. the decisions which affected the regions in which they lived, the decisions which concerned them more particularly as minorities and all the general economic decisions, which also affected them. Minorities should participate on an equal footing with all the other groups in the population in the development of society as a whole, account being taken, of course, of their cultural, linguistic and religious identity. Furthermore, their culture and religion should, as Mrs. Warzazi had said, be gradually integrated and not, because of the risk of marginalization, assimilated.

51. Protection of the rights of minorities, which he stressed must not affect the rights of other members of society, was an extremely complex task that required the assistance not only of jurists, but also of anthropologists, sociologists and philosophers, and for which the international organizations should help the States concerned.

52. Mrs. KILIC (World Federation of Trade Unions) said there could be no lasting peace so long as peoples were deprived of their legitimate rights to self-determination; that was particularly true in the Middle East. Her Federation hoped that, in its resolution on the item under consideration, the Sub-Commission would reaffirm and guarantee clearly and unreservedly the fundamental right to self-determination of all the peoples of the world, without any distinction.

53. The Federation would also like the Sub-Commission to stress clearly in its report and resolutions the urgent need to promote conditions that would enable the Kurdish people freely to exercise its right to self-determination. The Kurdish nation comprised 30 million persons; 17 million of them were in Kurdistan, which Turkey had occupied and devastated, or had been exiled to Turkish towns, although that did not prevent the Turkish Government from denying the very existence of the Kurdish people. Furthermore, since April 1990 a state of emergency had been in force in the Kurdish provinces of Turkey and it was consequently impossible to know what was happening there.

54. In southern Kurdistan, more than one and a half million Kurds living under Iraqi occupation had likewise been expelled and displaced, measures without any reaction or intervention by the international community in their favour. Such silence was tantamount to approving a policy of genocide, in violation of the purposes of the United Nations and the relevant international instruments.
Furthermore, substantial military aid was being furnished to the States that had colonized Kurdistan and were pursuing the policy she had complained of.

55. Her Federation therefore requested the Sub-Commission to take the necessary measures to deal with that alarming situation and, in particular, to place the question before the General Assembly and the Security Council so that they could immediately prohibit the supply of weapons and war material to each of the States that had colonized Kurdistan and send observers to the combat zones to ensure that the civilian population was treated humanely, in accordance with international law. It also requested the Sub-Commission to alert the World Health Organization and other competent specialized agencies so that steps would be taken to evaluate the medium- and long-term consequences of the use of chemical weapons in Kurdistan, to formulate effective measures to protect the population against those weapons, and to elaborate strategies that would make it possible to resume cultivating the areas poisoned by chemical bombing.

56. Mr. BARSH (Four Directions Council) noted that, although the protection of minorities was part of the original mandate of the Sub-Commission, it had received relatively little attention over the past 40 years. It was therefore with satisfaction that his organization took note of Mr. Eide's first progress report on the question. Mr. Eide rightly stressed that ethnic conflicts were among the most destructive and widespread human rights problems in the present-day world. The question of minorities accordingly merited the highest priority in the work of the Sub-Commission and it was absolutely essential to find the means of balancing the rights and claims of minorities and majorities.

57. The situation facing the international community was, however, one of its own making. The United Nations had not emancipated distinct peoples but colonial territories, regardless of their ethnic composition. Nor had it decolonized certain parts of the world, such as those occupied by indigenous peoples or those claimed as parts of the metropolitan territories by members of the Security Council.

58. Furthermore, it must be kept in mind that growth and development often resulted in the shift of economic power among groups, a development which intensified existing ethnic tensions and might create new ones. That was why development strategy was so closely linked with questions of security and the protection of human rights, and international institutions had unquestionably played a role in aggravating problems caused by decolonization.

59. It was therefore the United Nations task to resolve the problems it had helped to create by finding new ways of accommodating diversity within existing States, without prejudice to the possibility of recognizing new States where appropriate. It must be emphasized that the non-recognition of minorities was not a practical option, since human nature was such that both the recognition and non-recognition of minorities tended to strengthen ethnic identity within a State. Of course, the arrangements to be made should not restrict the right of individuals to move freely between a minority and the majority society; nor should they give the minority control over the majority or empower autonomous institutions to ignore universally recognized human rights and fundamental freedoms. Apart from those basic conditions, however, the form in which a particular group was recognized in the political institutions of the State must, if that recognition was to be successful, be based upon agreement and bear a reasonable relationship to the objective situation, demographically and economically, of the minority in the State.

60. With regard to the classification of minorities, the distinction made by Mr. Eide between "settled minorities" and "recent immigrants" was useful. His organization thought, however, that other criteria should also be taken into consideration in identifying situations where special protection was required. In its opinion, the fundamental issue was free choice or consent, and not simply the date of each group's arrival in a country. To the historical criterion of consent must be added two other, very pragmatic criteria, namely size and geographical concentration; they determined not only the likelihood that a right to autonomy would be claimed, but the extent to which it could be meaningfully achieved. That was a complex question and Mr. Eide would have to endeavour to obtain as much information as possible on those aspects of it in order to be able to handle it appropriately.

61. For the same reasons, it was essential to maintain the distinction between indigenous peoples and minorities, two concepts which the United Nations had in fact long dealt with as related but separate. The Special Rapporteur should avoid duplicating the efforts of the Working Group on Indigenous Populations. The Four Directions Council nevertheless encouraged him to draw upon the field of indigenous rights for examples and principles which might usefully be applied to some minorities.

62. His organization considered that the draft declaration did not add much to articles 2 and 27 of the International Covenant on Civil and Political Rights. The Human Rights Committee had applied those articles in a fairly broad manner and the Committee on the Elimination of Racial Discrimination had gone well beyond article 27 in its interpretation of the duty of States to adopt positive measures to combat racism against minorities. That was a delicate problem which should be addressed within the framework of the technical review of the draft declaration requested by the Commission. During the review, the Sub-Commission should request the Secretary-General to ensure that the draft declaration was compared, not with the text of article 27 and other relevant instruments, but with the interpretation of those provisions by the relevant treaty bodies.

63. Given the complexity and diversity of minority situations, the drafters of the declaration had naturally tended to settle for the lowest common denominator in all cases. Thus, the draft did not provide guidelines for situations in which far more could be achieved, in view of the size, geographical situation, history and conditions of particular minorities. Of course, that was exactly what Mr. Eide proposed to study in a systematic manner and the Four Directions Council therefore attached the greatest importance to the continuation of the work of the Special Rapporteur.

The meeting rose at 1.05 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 August 1990, at 4 p.m.

Chairman: Mr. TÜRK

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Protection of minorities (continued)

Organization of work (continued)

This record is subject to correction.

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GE.90-12719/2269B

The meeting was called to order at 4.20 p.m.

PROTECTION OF MINORITIES (agenda item 18) (E/CN.4/Sub.2/1990/46; E/CN.4/1990/41; E/CN.4/Sub.2/1989/43) (continued)

1. Mrs. BIRRAUX (Pax Christi International) said that her organization was greatly concerned at the plight of the Yanomami Indians of northern Brazil and southern Venezuela who were threatened with extermination unless urgent action was taken by the Government of Brazil, with the aid of the international community.

2. Since 1987, the territory of the 10,000 Yanomami Indians living in Brazil had been invaded by 45,000 gold prospectors who had also spilled over into Venezuela; the Venezuelan President had expressed serious concern to the Brazilian authorities.

3. In 1989, the Sub-Commission had accepted in principle an invitation from a non-governmental organization for the Chairman of the Working Group on Indigenous Populations to visit the indigenous territories in Brazil, in particular those of the Yanomami, provided that such an invitation was conveyed officially by the President of Brazil. However, no such invitation had been forthcoming. In view of the dramatically deteriorating situation of the Yanomami, her organization accordingly urged the Sub-Commission to do everything possible to persuade the Brazilian Government to agree to such a visit. Assistance in that connection had already been offered by ILO and she was sure that other organizations such as WHO, UNEP and the International Committee of the Red Cross would be prepared to follow suit.

4. The health of the Yanomami was of particular concern. Since 1987, between 15 and 20 per cent of the Yanomami population of Brazil had died as a consequence of diseases to which they had no immunity, including malaria, respiratory infections and venereal disease. There was also hunger, violence in the form of massacres and rape and river pollution through mercury poisoning.

5. On 20 October 1989, a federal judge in Brasilia had ordered the withdrawal of the invaders, the organization of a health campaign and the demarcation of 90,000 sq. km. as the ancestral home of the Yanomami. The health campaign had confirmed the extent of the disaster but had done little to assist the Indians. The withdrawal of the gold prospectors had lasted two days and the Federal Police, the Ministry of Justice, the regional Government of Roraima and the trade unions of the gold prospectors had reached an agreement as a consequence of which President Sarney had issued three decrees creating three reserves for the gold prospectors situated almost entirely within the ancestral territory of the Yanomami. The new Brazilian Government had not abrogated those decrees which were contrary to the decision of the Federal Court and the Federal Constitution. Recently the Secretary of State for the Environment, Mr. José Lutzenberger, had urged President Collor de Mello to implement the measures stipulated by the Federal Court. No reply had yet been forthcoming. The consequence was that no improvement in the situation of the Yanomami was yet in sight notwithstanding the dynamiting of a number of clandestine landing-strips used by the gold prospectors. Recent measures taken at the national level had made the health work more difficult and the National Indian Foundation had recently dismissed its only three officials who spoke the Yanomami language.

6. Two public prosecutors who had recently visited the Yanomami had concluded that they had entered the final phase of extermination. Their territory had become uninhabitable because of river pollution and deforestation. The Government had argued that it did not have the necessary funds available but a number of international governmental and non-governmental organizations were ready to provide the necessary assistance for the survival of the Yanomami. Public opinion both inside and outside Brazil was following the situation with great attention.

7. Pax Christi International respectfully urged the adoption by the Sub-Commission of a resolution recommending that the Secretary-General of the United Nations should propose to the Government of Brazil that the Chairman of the Working Group on Indigenous Populations be invited to visit the country and that he should request the assistance of the specialized agencies of the United Nations.

8. Mr. PHILLIPS (Minority Rights Group) said that there was widespread determination among many nations in the world, including the Soviet Union and the United States of America, to seek reconciliation and avoid conflicts. It was important, however, to be realistic; conflicts, including repression, had too often been seen as a way of resolving unwanted social, economic or political problems. In those circumstances it was those without power, the minorities, who were often persecuted.

9. Recent studies by Uppsala Institute of Peace Studies had shown that the majority of the world's 111 serious conflicts involved majorities and minorities. It was therefore pleasing to note that it had become widely recognized that there were problems in the way majorities treated minorities. The main conclusions of an international conference on minorities organized by his organization in conjunction with the Danish Helsinki Committee had been presented to the CSCE Meeting on the Human Dimension held in Copenhagen in June 1990. There might be other regional governmental groupings in Africa, Asia and Latin America that have also had important discussions on minority issues, whose conclusions were equally valuable. It would be useful for the Sub-Commission to have those conclusions circulated to them.

10. The dramatic examples of violent minority conflicts ranging from Sri Lanka to Northern Ireland and from Burundi to Palestine were well known to members of the Sub-Commission. What was not so well known was the resentment that existed in many societies where "disempowered" minority groups were excluded from a broader society. The experience of parts of Eastern Europe had shown how crucial it was to involve all the people if there was to be social and economic development. His organization believed that the positive contributions that minorities could make to the social, cultural and economic development of society should be reflected in continuing studies on the subject and in that connection he welcomed Mr. Eide's reference to that aspect.

11. In Commission resolution 1990/105 it had been agreed that a questionnaire should be sent to Governments and interested non-governmental organizations on the policies of institutions and procedures adopted by States. It was, however, also essential to obtain the views of minorities and his organization would welcome knowing how that could be achieved. The perceptions of

majorities, minorities and external observers might all differ and the perception of the areas of conflict by minorities, as a subjective value judgement, was crucial to understanding the situation.

12. Mr. Eide had asked if a distinction should be drawn between "settled" minorities and "recent immigrant" minorities noting that, for recent immigrant groups, the main concern should be to ensure equality as far as possible. That might be a useful distinction but, as Mr. van Boven had pointed out, it would need handling with great care. It might be reasonably argued that migrant workers who were only on short-term contracts in a country could not have a long-term commitment to the State and could not therefore expect special rights to be made available to them as a group. However, refugees sometimes remained a long time in the new country and might join "settled" minorities. Indeed, the misnomer of "immigrant" was often used in Europe to describe second and third generations of ethnic minorities who were full citizens of a country. Those people had been excluded from the majority society at the outset, partly out of prejudice and partly because of the free choice and temporary nature argument. Generations later, however, the exclusion continued. Although in law they might have equality, in practice there was no equality of opportunity and the social and economic disadvantage was passed on to subsequent generations. Special measures were needed at an early stage to prevent a new community becoming marginalized, embittered and then potentially in conflict with society. The questionnaire should reflect the breadth of that issue.

13. In the experience of his organization, much might be learned from the numerical concentration of a minority either in a region or nationally. It was often in cases where minorities constituted between 15 and 25 per cent of the population that the greatest conflict occurred, especially if the minority was closely linked to a powerful body or State in the region. When numbers exceeded 25 per cent it was obviously in the interest of the majority that it should seek a peaceful accommodation.

14. In conclusion, he expressed the hope that Mr. Eide's report, when complete, together with the questionnaire and the records of the discussion would be given wide distribution to member States and, through appropriate means, to minorities.

15. Mr. LITTMAN (World Union for Progressive Judaism) said that he wished to refer first of all to a statement concerning the Palestinian minority in Israel made by Mr. Alfonso Martínez at the Sub-Commission's 7th meeting.

16. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, said that it was his understanding that consideration of agenda item 5 (a) had been concluded and that accordingly the speaker was out of order.

17. After a procedural discussion in which Mr. LITTMAN, Mr. ALFONSO MARTÍNEZ, Mrs. KSENTINI and Mr. JOINET took part, the CHAIRMAN ruled that, pursuant to rule 43, paragraph 2 of the rules of procedure, speakers must confine their comments to the agenda item under consideration, currently item 18. Any disguised right of reply to a statement made under another item was accordingly out of order. He requested Mr. Littman to confine his remarks to item 18.

18. Mr. LITTMAN (World Union for Progressive Judaism) said that the main topic he wished to raise concerned the ancient Jewish community of Syria which, for the past four decades, had been hostage to the politics of the Syrian Arab Republic. The situation of that ancient community had been described in earlier statements which he had made to the Sub-Commission and which had been published in his organization's publication numbers 7 and 8.

19. Following a meeting in 1977 between President Carter and President Hafez al-Assad, the latter had authorized 14 single Jewish girls to leave Syria out of a total of over 500 such women. About 200 of those victims continued to be trapped in the Syrian Arab Republic. Despite assurances to the United States Government, contained in a State Department document of 8 November 1989 to the effect that Syria had agreed to consider positively applications for legal emigration for those with relatives who had already emigrated and to allow single Jewish women to leave Syria, little progress had been made and the women had remained trapped.

20. The Syrian Arab Republic had ratified the Convention on the Prevention and Punishment of the Crime of Genocide which stipulated, in its article 11, that genocide meant, inter alia, any act imposing measures intended to prevent birth within the group. By refusing to allow Jewish women of child-bearing age to leave the country and to marry a member of their faith abroad, the Syrian Government was effectively imposing measures intended to prevent births within the group.

21. It would be encouraging if, instead of maintaining silence on the matter, some of the experts on the Sub-Commission could refer to that disgraceful treatment of a minority for two generations.

22. Mrs. DAES suggested that the questionnaire in Mr. Eide's report should be submitted to Governments, specialized agencies, and governmental and non-governmental organizations with a view to collecting information, comments and views.

23. Members of the Sub-Commission and representatives of non-governmental organizations had already referred to the history of the problem of minorities, their treatment and the policies and practices of forced assimilation and integration. She therefore proposed to deal only with certain basic issues.

24. She considered that the study should be prepared within the framework of the problems involving persons belonging to national, ethnic, religious and linguistic minorities. She suggested that the study should not deal with problems facing other minorities, which she would call "social minorities", and which would include migrant workers, aliens, refugees and non-citizens, however much sympathy and concern might be felt for those vulnerable groups. Moreover, certain problems facing the social minorities were already being dealt with in studies by bodies and organs of the United Nations system and by some of the Sub-Commission's Special Rapporteurs.

25. Article 27 of the International Covenant on Civil and Political Rights provided specific legal obligations for the States which had ratified the Covenant. The meaning of the terms "group" and "in community with others" must be analysed, since it was essential for the purposes of the study to have a unified and clear interpretation of the terms and concepts contained in

article 27. It was also important to continue to respect the distinction between minorities and indigenous people. The study should also take into account the relevant decisions by the Human Rights Committee.

26. The question of the post-Versailles treaties and other international instruments for the protection of minorities, raised in paragraph 28 of the report, was of paramount legal and practical importance. She noted in that paragraph that the Secretary-General, in his Study on the Legal Validity of the Undertakings Concerning Minorities (E/CN.4/367 and Add.1), on the basis of the principle of changed circumstances (clausula rebus sic stantibus), held that the system of pre-war minority protection had ceased to exist, whereas Mr. Türk, in a recent paper, "Minority Protection in Human Rights Conventions", argued that some of the provisions might still have legal effect.

27. In that connection, she pointed out that according to present-day international law, the binding legal force of international treaties might be terminated in four different ways: a treaty might expire, be dissolved, become void, or be cancelled. There were three grounds for dissolution: mutual consent and withdrawal, which were indispensable, and a vital change in circumstances occurring after the assumption of the obligation. The theory of changed conditions was based on the rule of Conventio omnis intellegitur rebus sic stantibus, or the clausula rebus sic stantibus. Two theories were advanced for the application of that rule. The first was that vital changes might occur in the position of the States which justified release from the obligations assumed. The second was that every treaty was concluded on certain assumptions, and that where, by virtue of changed conditions, a situation was created which, if it had existed at the time the treaty was signed would have induced the parties not to sign or ratify the instrument, the treaty might be dissolved. Both theories led to the conclusion that treaties might be dissolved if the conditions on which they were based no longer existed. The principle had been supported by Attorney-General Biddle in an opinion dated 28 July 1941, but according to Professor J.L. Brierly, the principle was by no means a well-established rule of international law, and even if it were recognized, it could be resorted to only in very exceptional cases, and only entitled the State concerned to request release from its obligation by the other party. The latter principle was clearly formulated in the protocol to the Treaty of London, 1871. The same rule was implicit in Article 19 of the Covenant of the League of Nations and it had been a generally recognized rule of international law that if the doctrine of the obsolescence of treaties, namely that their executory clauses had effect only so long as the essential conditions under which they were concluded remained, was to be put into force, the proposition that the essential conditions had changed needed either the assent of the parties interested in the obligation or the decision of a tribunal. In other words, one party to a treaty might not, under the rule of rebus sic stantibus, unilaterally declare its obligation thereunder to have ceased to be binding.

28. Accordingly, she wished to state for the record that the Treaty of Lausanne of 1923 remained unchanged. She shared the views set forth on page 8 of Mr. Türk's paper on "Minority Protection in Human Rights Conventions".

29. In conclusion, she proposed that the Sub-Commission should ask Mr. Eide to continue his study and should request the Secretary-General to give him all possible assistance.

30. Mr. SACHAR suggested that the word "religion", which already appeared in paragraph 13 (c) of the report, should also be included in the second sentence of paragraph 5 of the questionnaire. Otherwise it would be difficult for India to answer the questionnaire.

31. He also suggested the addition to the questionnaire of a further question: whether any legislative or other administrative steps had been taken or were a part of the laws of the land giving protection to minorities.

32. Mrs. BANDETTINI DI POGGIO (International League for the Rights and the Liberation of Peoples) said that the basic instrument for the work of the International League was the Universal Declaration of the Rights of Peoples, proclaimed in Algiers on 4 July 1976, section VI of which specifically devoted three articles to the rights of minorities. Within that frame of reference, her organization had been part of an international campaign over the past 12 years, aimed at warning national and international authorities of the threat faced by the Yanomami Indians of northern Brazil and southern Venezuela. The Yanomami constituted the largest minority in South America that had until fairly recently escaped colonization. They were extremely vulnerable to alien elements entering their territory from outside; the threatened disruption of their lives and traditions was compounded by the fact that their territory was rich in valuable and strategic material.

33. She also wished to state officially that her organization joined the Pax Christi representative in urging the Sub-Commission to adopt a resolution recommending that the Secretary-General should request the Government of Brazil to agree to a visit by Mrs. Daes to the Yanomami territory and to other Indian territories of Brazil without any restrictions and to seek and accept the international co-operation offered by the International Labour Organisation and other non-governmental organizations and humanitarian bodies in order to save the Yanomami people from total destruction.

34. Mr. BOS (Bahá'í International Community) said that, in dealing with the protection of minorities and human rights, valuable insights could be gained by considering the historical evolution of mankind. Slavery, which had once been generally accepted in many parts of the world, was today widely viewed as an abhorrent practice which could not be countenanced under any pretext. As civilization advanced, standards of justice also evolved, but old patterns of behaviour were not easily forgotten. The world was currently engaged in a struggle to emancipate itself from the practice of discrimination against ethnic, religious and linguistic minorities. Such a dramatic shift in the structure of social relations required more than a minor adjustment in attitudes: it required a whole new perspective about mankind.

35. The Bahá'í International Community believed that recognition of the fundamental oneness of mankind and the interdependence of all peoples was the foundation for true social equality and respect for the fundamental human rights of all people, including persons belonging to minorities. Efforts to protect the rights of minorities which were inspired only by the desire to avoid or suppress conflict between minority groups, or between minority groups and the dominant group in society, were doomed to failure.

36. Bahá'í communities, which embraced a broad cross-section of races, religions and cultures, including over 2,000 ethnic groups, sought to tap the rich diversity of culture and thought of minorities in building its communities. On the other hand, it was also a challenge to unify that diverse community with the understanding that the advantage of the part was best achieved by the advantage of the whole. The watchword in that social progress was "unity in diversity".

37. Mr. Eide pointed out the need for appropriate ways of managing ethnic and minority relations in a constructive and peaceful way; however, he questioned whether it was possible to find generally applicable models to handle the different situations where minorities were involved. In that respect, the experience of the Bahá'í International Community might contribute to the search for generally applicable models for conflict resolution.

38. Decision-making in Bahá'í communities consisted of a collective consultative process, based on universal spiritual principles and hence adaptable to any culture. Because it required frankness and compassion, the consultative process engendered trust, broke down traditional misconceptions about minority groups and created a dynamic unity. The process also fostered co-operation and the spirit of service and thus discouraged even subtle forms of intimidation.

39. The Bahá'í International Community believed that the elimination of discrimination against minorities and the development of the requisite social and economic support structures required that education should be extended to all peoples; it should aim at developing each individual's capacities and should include experience in consultation so that individuals would be prepared to contribute fully to the welfare of society. In that respect, the Bahá'í International Community saw a strong connection between the work of the Sub-Commission and the need for universal education. It therefore urged Governments to be mindful of the educational needs of minorities within their borders during 1990 - the International Literacy Year - and throughout the coming campaign to provide education for all by the year 2000.

40. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) said that in Turkey discriminatory legislation against non-Turkish peoples mainly affected the 10 million Kurds, who represented approximately one third of the population. Despite successive deportations, the majority of the Kurdish people still lived in Kurdistan.

41. According to the Preamble of the 1982 Constitution, currently in force, no idea or opinion contrary to Turkish national interests, the indivisibility of the Turkish State and territory, Turkish historical values, and the ideas inherent in the nationalism, principles, and reforms of Atatürk could be granted protection.

42. Current Turkish legislation, based on that of Mussolini's Italy, contained numerous discriminatory articles reflecting that nationalistic ideology. For example, article 26 of the Constitution, safeguarding freedom of expression, provided that no language prohibited by law could be used in the expression and dissemination of opinions. Article 28, safeguarding the freedom of the press, provided that no one might publish in a language

prohibited by law. Act No. 2392 of 1983 specified that the mother tongue of Turkish citizens was Turkish, that it was forbidden to use languages other than Turkish as a mother tongue or to carry out any activity designed to disseminate those other languages.

43. A breach of the language laws was liable to punishment by terms of imprisonment ranging from six months to three years. The prohibition as to language resulted in inequality before the law, for the sentence of anyone speaking Kurdish in court was increased as a result of that additional offence. Penalties could be imposed for each fresh statement in Kurdish, and cumulatively could result in life imprisonment. Many Kurds had been arrested and sentenced for opposition to the forces of law and order merely because they had not understood an order or a question. The prohibition as to language also resulted in inequality of education, for Kurds were compelled to study in Turkish, a language foreign to them, unrelated to Kurdish.

44. The so-called revolutionary and nationalist laws of Atatürk, whose principles were safeguarded in the present Constitution, contained prohibitions on the wearing of certain articles of clothing, provisions concerning the compulsory translation into Turkish of forenames and family names and systematic translation into Turkish of place-names.

45. Kurdistan, which had been recognized from the time of the Seljuks until the end of the Ottoman Empire, had abruptly ceased to exist. By 1986, 80.8 per cent of place-names in Kurdistan had been changed. Twelve thousand eight hundred and sixty-one small villages, out of a total of 34,957 in Turkey, and 271 larger ones, out of a total of 881, were affected.

46. Seven hundred thousand Kurds had already been deported between 1914 and 1919. Hundreds of thousands of others were deported in the years that followed, since when Kurdistan had been subject to special legislation. Today some 30 deportation laws were in force and there had been a succession of states of emergency or of exception in Kurdistan, the most recent dating from April and May 1990 (decrees Nos. 413, 424 and 425).

47. Decrees Nos. 413, 424 and 425 prohibited dissemination of information about events in Kurdistan, granted additional powers to the Governor of the Kurdish provinces under the state of exception, did away with any effective remedy and doubled penalties under articles 125 and 169 for Kurdish so-called separatists and persons assisting them.

48. Under article 9 of Act No. 2510 of 1934 (Mecburi Iskan), it was prohibited for those not of Turkish mother tongue to establish a neighbourhood or village or to associate in communities of workers or artisans. Such persons were prohibited from bequeathing or selling a neighbourhood, a village, an employment or a craft to anyone of their race.

49. Under the Penal Code it was an offence to express Kurdish identity in any manner whatsoever or to criticize the discriminatory measures. Article 141 of Act No. 765 of 1926 provided that anyone attempting to establish organizations aimed at destroying or weakening national feelings could be punished by a term of imprisonment of between 8 and 15 years. Propaganda having the same end in view was punishable by imprisonment of between 5 and 10 years.

50. Article 81 of Act No. 2830 of 1983 stipulated that political parties were not allowed to affirm that minorities based on national, religious, cultural, racial or linguistic differences existed on the territory of the Republic of Turkey.

51. It was essential that the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international instruments should be observed; and that the legislation of Turkey should be revised to eliminate all discrimination against the non-Turkish peoples under its domination. The present Turkish régime was a democratic one, and he therefore hoped that it would repeal the laws discriminating against Kurds.

52. Mrs. PARKER (International Educational Development, Inc.) welcomed the Sub-Commission's initiatives to study ways and means of facilitating peaceful and constructive solutions to problems involving minorities.

53. Both Mrs. Palley's working paper (E/CN.4/Sub.2/1989/43) and Mr. Eide's progress report (E/CN.4/Sub.2/1990/46) reflected the Sub-Commission's current intention to focus on contributing to the resolution of conflicts rather than on defining minorities or their rights, although both experts had recognized that some attention must be given to the content of minority rights and to relevant definitions. She urged the Sub-Commission to maintain contact with the Commission and its Working Group throughout the debates on the subject.

54. The IED had several concerns relating to minorities that had not yet been addressed. The first related to situations in which States controlled by majority groups failed to protect the human rights of minority groups. That situation was not easy to solve peacefully, and ultimately involved the question as to the point at which persistent discrimination and the non-fulfilment of the human rights of a minority generated that minority's right to self-determination and loss of the majority Government's right to govern the minority. Unless that question was addressed, it might be impossible to resolve a number of current conflicts.

55. That issue was perhaps best illustrated by the situation in Sri Lanka. Prior to colonial rule, that island had contained two separate States: one Sinhalese and one Tamil. The colonial Power had established unitary rule, and decolonization had resulted in a continuation of the unitary State, with a Sinhalese majority and a Tamil minority. The lands formerly governed by Tamils now came under the jurisdiction of the unitary Government, which was heavily dominated by Sinhalese, and the Tamil people were no longer in charge of affairs in their traditional lands.

56. Unfortunately, the succession of Sinhala-majority Governments had not given adequate attention to promoting and protecting the rights of the Tamil people. A systematic and insidious pattern of discrimination and communal unrest had developed early on in that forced marriage, with protest that was at first peaceful, and then, when demands were not met, open hostilities. As hostilities had increased, so had large-scale violations of the rights of Tamil people, thousands of whom had been arrested and detained. According to the Sinhala-dominated Government, the Tamils had then become a "subversive" element, which in turn had resulted in an increasingly militant position on

the part of the Tamil population. For the past eight years, there had been an almost continuous state of civil war between the Sinhala-dominated Government and the Tamil population and its militant factions.

57. The Universal Declaration of Human Rights held that all persons, including members of minority groups, had the right to the full realization of their human rights and to an international order in which their rights might be realized. For the past 40 years in Sri Lanka, the Sinhala-controlled Government had been unwilling and unable to promote the human rights of the Tamil population, which had accordingly lost all confidence in its willingness or ability to do so.

58. Were people in that situation required to settle for less than their full rights? Could the international community impose on a people a forced unity they no longer desired and in which they could clearly demonstrate that they had been abused?

59. If the human rights of the Tamil people and others in a similar situation were to be realized, the international community must invoke the principles of determination for minorities subsumed into larger States and whose rights were persistently neglected. That eminently just solution was not without some limits. The question arose as to how bad discrimination had to be to ripen the right to self-determination, and how long a minority must seek remedy through traditional democratic processes before a majority Government lost the right to govern it. The IED considered that in the case of Sri Lanka, 40 years was long enough for any group to wait for its human rights. The period during which a people was required to seek internal remedy might reflect the kind of violation at issue: a people threatened by genocidal acts might invoke the principle of self-determination sooner than one facing severe and persistent discrimination in employment.

60. With respect to the democratic process, even in the best of circumstances a minority population such as the Tamils would be perpetually outnumbered because of the one person one vote rule, which rendered domestic legislative remedy extremely unlikely. Moreover, in many countries the judiciary was unlikely to issue or enforce a ruling ordering minority rights.

61. Also at issue was the question as to whether the principle of self-determination arising from persistent violations of the rights of minorities applied only to peoples referred to by Mr. Eide as "settled" minorities. That was the case of the Bahá'í community in Iran, a dispersed, trapped minority suffering serious abuse. If the Government of Iran had lost the right to exercise jurisdiction over the Bahá'í, what entity did have that jurisdiction?

62. Another relevant concern was the situation in which a State invaded and annexed another State and attempted to convert what should be an issue of determination into one of minority rights. The situations in Kuwait and Tibet illustrated that problem. The invading States clearly preferred that discussion of human rights should focus on minority rights, whereas in neither situation were the affected peoples minorities. They were the majorities in their own countries, forced to submit to foreign domination. When the international community attempted to address the situation as one of

protecting minorities, it fell into the position of appearing to uphold the legality of the annexations. The IED assumed that Mr. Eide would study that issue in his final report.

63. In conclusion, she hoped that those difficult situations would be addressed and that the outcome would be a strong statement in support of her organization's views that the time afforded Governments to grant minorities their full rights was not unlimited and that forced annexation never reduced a people into a minority.

64. Mr. EIDE said that the discussion, probably the most profound on minority issues held since 1950, had been extremely valuable. His study was now becoming a collective study by the whole Sub-Commission because of the contributions made by members and non-governmental organizations.

65. The question of whether differences should be highlighted or whether the focus should be on equal rights for minorities had been raised by Mr. Sadi. His own view was that stress should be laid on the desirability of a community made up of different groups with their own traditions, each benefiting from one another.

66. All had agreed that the aim should not be assimilation but integration. However, the extent of integration depended on practical considerations that had to be taken into account in the special circumstances.

67. Mr. Heller and others had pointed out that the use of the word "model" was in contradiction to his general comments on the diversity of situations. He agreed with that point, as well as with Mrs. Palley's suggestion of a repertory of possible approaches to different situations that could be listed.

68. As to the question of the scope of the study, he agreed that the religious element should be included and would expand the study accordingly. He would also take into account Mr. Ilkahanaf's suggestion that tribal issues be addressed, and requested relevant information concerning the African situation.

69. The question of definition had also been raised. He did not intend to make a definition, but would proceed on a very broad understanding which would include religion as well as the elements already mentioned in his paper.

70. A very important discussion had focused on the question of "settled" minorities versus "recent immigrant" minorities. In response to his request, many ideas had been put forward. Some speakers, including Mr. Sadi, had been in favour of making such a distinction; others, including Mr. van Boven and Mr. Diaconu, had argued that the complexity of the situation had to be taken into account. As Mr. van Boven had pointed out, there were many cases in which people had long been settled in a locality but had changed State because of a redrawing of boundaries.

71. The observer for the International Council of Jewish Women had argued that there was little or no difference in the rights of "settled" and "recent immigrant" groups but that there were differences in the mechanisms of receiving them. That was a matter that could be explored.

72. A number of participants had provided additional information on particular country situations, for which he was very grateful.

73. As to the question of the mother tongue and that of a mother who spoke several languages, which had been mentioned by Mr. Hatano, in most cases there was no problem because the mother tongue would be the language that was closest to the mother's heart and culture. That was a matter for the mother alone to decide and not a matter for legislation.

74. Mrs. Palley had stressed the need for a great deal of support from the secretariat. He would of course be pleased to receive support both from the secretariat and from outside sources, but was not unduly optimistic about the resources available. However, the study would take at least another two years and he proposed to carry it out in two stages, starting the following year with an analytical overview of the information received.

75. The view had been expressed that the questionnaire would not yield the desired results because Governments would tend to paint a rosy picture of the situation in their countries. However, some Governments were realistic and in any case the questionnaire would be sent to non-governmental organizations which would obviously not paint such a rosy picture.

76. In response to Mr. Sachar and others, he would include a question on religious minorities and references to constitutional and legislative measures, in connection with which Mr. Sachar had promised to provide sentences to be incorporated in the questionnaire.

77. He would drop the idea of having two sections in the questionnaire, one on "settled" groups and one on "recent immigrant" groups, and would adopt Mr. van Boven's suggestion of asking whether the information provided was applicable to "recent immigrant" groups.

78. He had already emphasized that ethnic conflicts could be extremely destructive. That was certainly not always due to the measures taken by Governments but could also be due to the activities of minorities. The observer for International Educational Development, Inc. had emphasized that point, and in the country she had mentioned, ethnic groups had acted in a manner that went beyond acceptable standards of behaviour in trying to exploit interest in minority issues. He intended to pay a great deal of attention to that point in completing his study.

79. He again thanked participants for their extremely useful contributions.

ORGANIZATION OF WORK (continued)

80. Mr. JOINET requested a translation into French of the legal opinion on the right to explanation of vote in connection with a secret ballot, already circulated in English.

81. The CHAIRMAN said that every effort would be made to meet that request.

The meeting rose at 6.05 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 August 1990, at 10 a.m.

Chairman: Mr. TURK

CONTENTS

Elimination of racial discrimination:

(b) Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist régime of South Africa

Protection of minorities (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-12731/2530B

The meeting was called to order at 10.25 a.m.

ELIMINATION OF RACIAL DISCRIMINATION

(b) ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO THE RACIST AND COLONIALIST REGIME OF SOUTH AFRICA (agenda item 5 (b)) (E/CN.4/Sub.2/1990/13 and Add.1)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) reminded members that the item had been inscribed on the agenda of the General Assembly and of the Commission on Human Rights following a recommendation by the Sub-Commission in resolution 3 (XXVI) of 19 September 1973. In 1974, the Economic and Social Council (ECOSOC) had approved the recommendation of the Commission on Human Rights that the Sub-Commission should be authorized to appoint a Special Rapporteur on the matter. Since that time, the question had been considered regularly by competent bodies of the United Nations on the basis of a report prepared and updated annually by Mr. Khalifa, the Special Rapporteur.

2. At its preceding session, the Sub-Commission had considered Mr. Khalifa's report (E/CN.4/Sub.2/1989/9 and Corr.1 and Add.1) and had adopted resolution 1989/18 recommending that the Economic and Social Council, through the Commission on Human Rights, should invite the Special Rapporteur to continue updating his list and to submit a new report to the Sub-Commission at its forty-second session. That recommendation had been approved by the Commission on Human Rights (resolution 1990/23) and by the Economic and Social Council (resolution 1990/34).

3. He also drew the Sub-Commission's attention to General Assembly resolution 43/92, inviting the Special Rapporteur to continue his work and to submit an updated report to the General Assembly at its forty-fifth session. In accordance with that request, the report currently before the Sub-Commission (E/CN.4/Sub.2/1990/13 and Add.1) would also be submitted to the General Assembly at its next session.

4. Mr. KHALIFA apologized for the delay in the publication of his report (E/CN.4/Sub.2/1990/13 and Add.1), a delay for which he took full responsibility, and which was the reason why only the English version of the document had been distributed.

5. He confessed that, after the preceding session, he had wondered about the usefulness of the update the Sub-Commission had again requested him to make in a situation which appeared to be so stagnant. Subsequently, however, the President of the Republic of South Africa, Mr. de Klerk, had succeeded in creating a climate of trust by taking a number of courageous measures.

6. But such measures, however positive and encouraging, should not induce the international community to relax its vigilance: there could be no question of allowing South Africa to obtain the lifting of sanctions by means of mere half-measures. So far, half-measures was all they amounted to, since Mr. Mandela, although free, was still deprived of the right to vote in his own country and as a result was still a non-person; in addition, the main pillars of apartheid were still in place and there was no explict commitment to remove them. The Population Registration Act, for example, still legally classified people by race; the Group Areas Act still prohibited blacks from residing in

most white neighbourhoods and from sending their children to white-only Government schools; and land acts dating back to 1913 and 1936 still reserved 87 per cent of South Africa's land for whites, despite the fact that they currently constituted only 14 per cent of the population.

7. In the light of such developments, which did indeed appear positive although there could be no doubt that they were merely hypocritical and deceptive ploys, some had been quick to pronounce the battle won, and had taken prompt steps either to lift sanctions, or to ease them. The British Foreign Secretary, for example, had announced unilaterally the ending of the ban on new investments in South Africa, although in February 1990 the European Parliament in Strasbourg had declared itself opposed to the lifting of economic sanctions, and the Commission on Transnational Corporations had decided at its sixteenth session in April 1990 to recommend to the Economic and Social Council that it should condemn the United Kingdom and Hungary for their recent steps to re-establish ties with South Africa. In fact, Hungary was currently conducting a major campaign to encourage emigration of skilled manpower to South Africa, while Poland had signed agreements with South Africa in April 1990 concerning the purchase of iron ore and the setting up of a foodstuffs venture with a potential turnover of $200 million a year. In May, a South African trade official had acknowledged that direct trade with new partners in Africa, Asia and Eastern Europe, including bastions of opposition to apartheid, was growing. Care should thus be taken not to display excessive optimism, since although the ultimate downfall of apartheid was not in doubt, any relaxation of sanctions might well delay it.

8. South Africa was faced with very great problems, problems which were both economic - brought about by international sanctions and by the resistance of the blacks - and political, since power sharing was inevitable. There was no doubt that it was his economic problems which had led Mr. de Klerk to adopt a conciliatory attitude. A recent study by a South African bank had shown that sanctions had cost the country between $32 and $40 billion from 1985 to 1989, as well as $4 billion in lost export earnings. In addition, the Trust Bank of South Africa estimated that, in 1989, average incomes had been 15 per cent lower than they would have been without sanctions. Where trade was concerned, however, the recent report by the Economic and Social Council, evaluating the effect of disinvestment and of the trade boycott on the South African economy, had noted that, although the steps taken had had an important influence on business morale, the effect on the economy had not been all that had been hoped for, because although some countries had decreased their trade with South Africa, others had stepped in to fill the gap. It was financial sanctions, imposed not only by Governments but also by international banks, which seemed to have had the greatest impact on the economy, and it was calculated that that impact would become even more marked after June 1990, when a large proportion of South African debt would have become due for repayment.

9. However, South Africa had succeeded in averting the crisis through a new rescheduling agreement announced in October 1989, even before Mr. de Klerk had taken the first of the steps referred to previously. That infamous deal with three British banks had helped to relieve international pressure. Nevertheless, Mr. de Kock, the former Governor of the Reserve Bank of South Africa, had stated in a warning to the Government that if it failed to speed up political reforms South Africa would "sink slowly into an economic abyss". It was not surprising, therefore, that Mr. de Klerk should be seeking

to have economic sanctions lifted rather than continue to deny that they had any effect on the country, or that he should have begun to look for new markets, first in Africa and currently in Eastern Europe.

10. Mr. de Klerk had announced new political initiatives in February 1990. The world was now waiting for those initiatives to bear fruit in the complete abolition of apartheid and in democratic power-sharing. Of course, that was not easy, and Mr. de Klerk had stated that he feared that an egalitarian voting system would not provide adequate protection for minorities and would not take into account the cultural, religious and language differences between South Africans. His own view was that that kind of reasoning was at the very root of apartheid, because although no one denied that it was essential to protect the rights of minorities, those rights did not include a right to monopolize wealth and power usurped by force, prejudice and arbitrary behaviour. The Conservative Party of South Africa continued to maintain that if minorities such as the Tswanas, Xhosas or Vendas were entitled to their own lands, that principle should equally be applied to Afrikaans-speaking and English-speaking South Africans. One would have regretfully to conclude that, in such a case, it would still be the white man who would determine who had rights and what those rights were.

11. Clearly, therefore, much remained to be done, and there could still be years and years of manoeuvring, stalling, and stresses and strains of every kind before the principle of "one man, one vote" was adopted. The recent clashes in South Africa and the use of violence by the authorities to quell them were not calculated to defuse the situation. Although Mr. de Klerk had promised to bring an end to white domination in South Africa, had freed Mr. Mandela and had agreed to negotiate with the African National Congress (ANC), so long as the ultimate objective had not been finally and securely attained, international pressure should continue to be strictly applied, in the way that the United States, the European Community, and the Commonwealth - with the notable exception of the United Kingdom - had undertaken to apply it.

12. In contrast to the situation before the massacre of Soweto, when the smallest concession on the part of the South African Government would have been applauded by the black community, the current situation was such that every day that went by without an advance being made towards a definitive settlement was deeply resented. The confrontation had become a physical one, and whatever the wish of the Government or the attitude of the rest of the world, pressure exerted by 22 million blacks was bound to lead to change. However, Pretoria was still managing to survive, due chiefly to the unrestricted flow of oil into the country and to the military technology being provided, notably by Israel, an action for which that country had again been condemned in November 1989 by the General Assembly.

13. The exchanges of views he had had with competent or interested persons had indicated that publication of the list annexed to his report had had some effect, and had helped to discredit those firms which had sought to have their names deleted from it. In his view, the publication and updating of the list should be continued for a further year, after which it would probably be easier to form a clear picture of the situation in South Africa, and to decide whether the activity should be continued.

14. Mr. TREAT welcomed the arrival on the South African scene of leaders worthy of the name, as well as the clear signs of the progress achieved there. However, he warned against any undue or premature optimism, and

pointed out that the battle was not yet won, even though a country such as the United States of America was capable of exerting enormous pressure on South Africa. He urged all human rights groups not to abandon their efforts until apartheid had been completely defeated.

15. As far as Mr. Khalifa's work was concerned, he believed that the time had come for the Sub-Commission to request the Secretary-General to ask the South African Government to permit Mr. Khalifa to go to South Africa, so that he could judge the state of affairs for himself.

16. He noted that the situation had improved in some respects. To begin with, the South African Government had lifted the state of emergency in all parts of the country except in Natal, and was to lift it in that area too in the near future. The Government had also decided to release some 500 political prisoners, and to allow more than 20,000 exiles to return to the country. Lastly, the ANC had suspended all armed actions, and both sides had undertaken to do everything in their power to bring about a peaceful solution. In that connection, the Sub-Commission might consider the question of amnesty when updating the report by Mr. Louis Joinet entitled "Study on amnesty laws and their role in the safeguarding and promotion of human rights" (E/CN.4/Sub.2/1985/16). That study had been initiated as a result of developments in South America, but different considerations might apply in South Africa. In any event, it was essential that the amnesty should not be an amnesty in name only, but should offer all political prisoners genuine human rights guarantees.

17. The Sub-Commission should encourage all those working for change. In South Africa, the question of a bill of rights was currently being debated. The international community should ensure that that bill of rights defined individual rights without reference to race, and that it at the very least protected the rights enshrined in the International Bill of Human Rights and in the African Charter on Human and Peoples' Rights.

18. Vigilance should not be relaxed just at the time when a solution to the problem was in sight. One of the guiding principles of democratic government was universal suffrage. Any policy that was restrictive in that respect was unacceptable to those who valued freedom and equality. The current form of government in South Africa - immoral, irrational and unacceptable - would always be condemned by all who believed in the inviolability of the citizen as an individual.

19. However useful economic sanctions might have been, it should be remembered that a majority Government would need a viable economy, and that accordingly selective sanctions might be considered. In addition, support should be given to those within the country, including members of the white community, who had long been struggling against apartheid, sometimes under dangerous conditions, either through democratic, non-racial trade unions, or by publishing anti-apartheid literature. There were in South Africa both whites and blacks who were prepared to work together to create a harmonious transition to a democratic society.

20. It was for that reason that it was important not to inhibit the process of reconciliation by acrimonious exchanges. Injustice was not a characteristic limited to the oppressor, and would not necessarily disappear with the system he had created; indeed, given the opportunity, the oppressed

might well in his turn become the oppressor. Account should also be taken of the fact that psychological traumas, hatreds and suspicions were slow to heal in the minds of peoples who had suffered. South Africa would thus need outside help from rational and humanitarian forces, and those forces should not evade their responsibilities. The Sub-Commission should make its own contribution to that effort, and should help to convince all South Africans that from now on they were to be part of a single, unified people.

21. Mrs. WARZAZI warmly commended Mr. Khalifa for his important contribution to the cause which the Sub-Commission had been defending so unremittingly for so many years. She expressed the hope that the text of his statement would be distributed.

22. Developments in the situation in South Africa gave grounds for a certain degree of optimism. The country did indeed seem to be at the dawn of a new era. It was nevertheless important, as Mr. Mandela himself had indicated, that the international community should not relax its vigilance, and should maintain sanctions against South Africa until the detestable system of apartheid had been abolished once and for all. That position was supported by the African Group in the United Nations, which had reproached the Secretary-General for having made no reference, in his report to the General Assembly in compliance with paragraph 10 of the Declaration on apartheid, adopted by the latter at its special session on apartheid (A/44/960), to the impact of sanctions on the South African régime, and for having made no mention of the efforts and role of liberation movements, notably those of the ANC. That organization, by its recent announcement of the suspension, if not the abandonment, of armed struggle, had in fact made an enormous concession, which should induce the President of the Republic of South Africa to respond favourably to those of its demands which had not yet been met.

23. However, the inter-ethnic conflicts currently unfortunately taking place in South Africa, which were not calculated to facilitate a solution, gave cause for regret. It was essential and urgent that dissension and armed struggle should be replaced by unity, so that the indescribable sufferings of the Azanian people could be brought to an end.

24. It would be useful for the Sub-Commission to continue its close monitoring of the situation in South Africa by requesting Mr. Khalifa to continue updating his list. Mr. Khalifa, who had for years been studying the adverse consequences of assistance given to the Pretoria régime, would be in a good position to submit a report based on an on-the-spot investigation of progress achieved in the process of dismantling apartheid. She accordingly supported the suggestion to that effect made by Mr. Treat, and hoped that it would be reflected in the Sub-Commission's draft resolution on the item under consideration.

25. Mr. YIMER congratulated Mr. Khalifa on the presentation of his report (E/CN.4/Sub.2/1990/13 and Add.1) and on his analysis of the situation in South Africa. For the past 17 years, the Sub-Commission had been considering the question of assistance given to the apartheid régime with the utmost seriousness, as part of its contribution to the world-wide struggle against that scourge. At the current session, it was doing so in very different circumstances, marked by the changes that had occurred on the international scene in general and in South Africa in particular. The relaxation of

international tensions had had an impact on the situation in South Africa, as was evident in the granting of independence to Namibia, the release of Mr. Mandela, the legalizing of political organizations, and the lifting of the state of emergency. On 14 December 1989, the General Assembly, for its part, had adopted the Declaration on Apartheid and its Destructive Consequences in Southern Africa, and on 21 August 1989, the Ad hoc Committee of the Organization of African Unity on southern Africa had adopted the Harare Declaration on the question of South Africa. The negotiations that had been begun between the South African Government and representatives of the black majority had resulted in the announcement by ANC of the suspension of the armed struggle, and in the white minority Government's agreement to release some 1,500 political prisoners and to allow 22,000 exiles to return to South Africa. The important concessions made by the blacks had been recognized as encouraging by the Secretary-General in his report on implementation of the Declaration on Apartheid (A/44/960).

26. However, all those positive changes did not mean that apartheid no longer existed, or that the struggle was over. It would be a mistake to believe, as some did, that sanctions against South Africa were no longer necessary and should be relaxed or even lifted. The majority of the international community was opposed to any such steps because, despite the progress achieved, apartheid had not been abolished, and acts of violence against the black population by the armed forces had not ceased. It was thus important to continue to put pressure on the South African Government and to maintain sanctions, as recommended by Mr. Mandela himself during his tour of Europe and the United States of America, until apartheid was totally and convincingly dismantled; that position had also been reaffirmed by the General Assembly in paragraph 9 (c) and (d) of the Declaration on Apartheid.

27. In his view, the work done by the Sub-Commission through its Special Rapporteur, Mr. Khalifa, should be seen as part of the international sanctions campaign against South Africa. It could not be disputed that the few changes that had occurred in South Africa were to a large extent due to the application of sanctions. The South African economy had in fact been severely affected by international sanctions, as has been pointed out by Mr. Khalifa in section III of his report. Accordingly, the Sub-Commission should continue its efforts in the struggle against apartheid, even though it was now able to hope that the day might not be too far off when it would no longer have the question on its agenda.

28. Mr. ILKAHANAF congratulated Mr. Khalifa on his remarkable work in compiling an updated report (E/CN.4/Sub.2/1990/13 and Add.1) containing an accurate assessment of the situation in South Africa. He approved of the idea that Mr. Khalifa should go to South Africa, with the consent of the South African Government, to make an on-the-spot investigation, and that he should transmit the findings of that investigation to the Sub-Commission at its next session. There was no reason for the South African Government to refuse permission for such a visit if it was truly sincere.

29. Although it was true that Mr. Mandela and other political prisoners had been released, that certain repressive laws had been abolished or relaxed, and that the ANC and the South African Government had engaged in consultations, there were no signs that South Africa was moving towards the setting up of a system based on the principle of "one man, one vote". The South African blacks were still oppressed and were still the victims of acts of violence,

and the international community should accordingly continue to exert pressure on the South African Government until the demands of the majority black population were met and apartheid was really abolished. Economic sanctions had been one of the most effective weapons in the struggle against apartheid, as was shown in Mr. Khalifa's report. However, a number of shortcomings in the application of those sanctions were helping to maintain the Pretoria régime in power. It was thus important that the Sub-Commission should continue to monitor the situation closely, and should extend Mr. Khalifa's mandate so that he could carry on with his work and continue to provide it with information on how the process of dismantling apartheid was developing.

30. Mr. HELLER associated himself with the tributes paid to Mr. Khalifa by many members. The report (E/CN.4/Sub.2/1990/13) showed that the world should continue to encourage the process of dismantling apartheid, and that maintaining sanctions against South Africa should still be the main feature of relations between the international community and that country. In that connection, he also supported the proposal that to renew Mr. Khalifa's mandate, although, taking into account the changes that had taken place and the new international situation, it would perhaps be useful if, in his next report, he could give particular attention to the question of recent new investments in South Africa and the economic ties which certain countries either maintained or had established with Pretoria. It would also be important to highlight the policies followed by the new Governments of certain States which had formerly, because of their ideological orientation, unreservedly condemned apartheid and abided by General Assembly resolutions. In his view, the question of the new relations now being established with South Africa might be worth closer examination.

31. Mr. GUISSE said the problem of apartheid existed for more than a century. The current sanctions against the South African régime had always been possible in the past, but had never been applied on account of the selfishness of those who had aided and abetted the racist régime in South Africa in countless ways. The institutionalizing of apartheid had led the oppressed to resort to armed struggle, and the methods used by the Government in power to repress that struggle had led to gross human rights violations of every possible kind. There was no doubt that a great deal of time would be needed before a peaceful and fully multiracial society could be established in South Africa.

32. Despite recent positive developments, the continuation of such serious violations gave grounds for acting with the utmost caution, and for advocating that sanctions against South Africa be maintained until apartheid had been totally dismantled. However, members should also bear in mind the plight of the front-line States, which had suffered the consequences of apartheid and needed help from the international community if they were to escape the situation of political, social and economic imbalance in which they currently found themselves.

33. Although application in South Africa of the principle of "one man, one vote" would in theory signal the final phase of apartheid, there would still be discriminatory practices which would need patient effort to eradicate, since a system which had been in force for so long would be unlikely to disappear in a few months or years.

34. In conclusion, he thanked Mr. Khalifa for his very comprehensive analysis of the system of apartheid. He reminded members that throughout the long, difficult and obstacle-strewn struggle, the OAU had always been at hand, giving both material and moral support to the black masses of South Africa in their struggle to combat apartheid and to restore the dignity of all men - whatever their race - in that part of southern Africa.

35. Mr. SACHAR joined with preceding speakers in congratulating Mr. Khalifa on his excellent report (E/CN.4/Sub.2/1990/13 and Add.1) and in asking for his mandate to be extended. He reminded the Sub-Commission that there were close links between his country, India, and South Africa, where Gandhi had for the first time applied his theory of non-violence.

36. He welcomed the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted by the General Assembly in December 1989, listing the essential measures which should be taken by the South African Government in order to create conditions favourable for negotiations; those measures included the repeal of laws such as the Internal Security Act, designed to restrict political activity, and the unconditional release of all political prisoners and detainees. India had great hopes of those negotiations, and was preparing to welcome Mr. Mandela in October.

37. Referring to his own country's experience, he expressed his concern at the emergence of certain trends which might well jeopardize the success of the movement for peace in South Africa. He had had the impression on reading documents issued by the Pan Africanist Congress of Azania (PAC) that that body was seeking to discredit the ANC by accusing it of weakness in dealing with the Government. India had experienced a similar situation at the time of its accession to independence in 1947. The Communist Party had then been of the view that independence had not yet been achieved and that the struggle should be continued. It had even attempted to damage the reputations of Gandhi and Nehru by accusing them of holding imperialist views. India had still not recovered from those attacks, or from the internecine disputes which had prevented the various parties from uniting their efforts in the interests of rebuilding the country.

38. He would like to warn all who were involved in the struggle for freedom in South Africa against that danger, and to encourage them to ensure that there was no split in the unity of the anti-apartheid struggle, since the battle had not yet been won. It was enough to listen to Mr. Mandela to become convinced that there was still a long way to go. The moment had not yet come to lift sanctions, since the South African Government was still refusing to make the simple declaration of intent that had been requested of it.

39. He hoped that, in his report the following year, Mr. Khalifa would be in a position to announce the final and irreversible disappearance of apartheid.

40. Mr. van BOVEN, referring first to the interim report submitted by the Secretary-General on progress achieved in the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa (A/44/960), noted with satisfaction that the Secretary-General had seen a number of encouraging signs in the way the situation had developed since the beginning of 1990. Although the attitude of the present Government, especially when compared to that of its predecessors, appeared to augur well for a marked improvement in the political climate within the country, the fact

remained that great efforts would still be required before citizens of that country could have complete freedom to engage in political activities. It should be remembered that the main apartheid laws which underpinned the racist régime had still not been repealed.

41. He congratulated Mr. Khalifa on his remarkable report (E/CN.4/Sub.2/1990/13 and Add.1), in which he had not merely compiled a list of those firms which still maintained commercial and financial ties with South Africa, but had also attempted to assess the impact of sanctions by making a study of the methods employed by the South African Government to evade them. He noted that, in paragraph 60 of the report, it was stated that the sanctions applied had not succeeded in reducing imports of strategic minerals, and that transfers of capital and technology to South Africa were continuing. Speaking as a member of the group of independent experts set up by ILO to monitor the application of sanctions and other actions directed against apartheid, he reminded the Sub-Commission that one of the tasks of the group was to ensure that ILO's declarations and programme of action were followed up in practice. For its part, the United Nations had established machinery for monitoring the oil embargo by setting up a special group based in New York. In its last report, the ILO group of independent experts had emphasized the positive impact of sanctions, and had pointed out that they had made a significant contribution to the improvement of the situation in South Africa. The group had stated that it believed that sanctions were the only way of exerting pressure which would enable results to be obtained by peaceful means.

42. Concerning financial sanctions, which had been found to be the most effective, he recalled the important role played by the United States Congress in forcing the Government of South Africa to take the necessary measures. However, like Mr. Khalifa, he deplored the fact that, in October 1989, the South African authorities had managed to conclude a third interim debt-rescheduling arrangement with international banks.

43. He agreed that it was not yet time to relax sanctions. He expressed the hope that Mr. Khalifa's mandate would be extended by a year, and reiterated the proposal he had made the preceding year that the Special Rapporteur should make a visit to South Africa. The recent United Nations mission was evidence of the timeliness of such a move.

PROTECTION OF MINORITIES (agenda item 18) (continued) (E/CN.4/Sub.2/1990/46; E/CN.4/Sub.2/1990/41; E/CN.4/Sub.2/1989/43)

44. Mrs. PALLEY said she would like to raise the question of some 500 Jewish women of marriageable age living in Syria, who had not been permitted by the Syrian Government to leave the country so that they could marry and lead a normal life. She urged the Sub-Commission no longer to be satisfied with assertions on the part of the representative of Syria that persons of the Jewish faith did not suffer from any discrimination, and to seek to obtain precise information on whether those young women would be permitted to emigrate in the course of the next six months.

45. She next referred to a rumour which could prove damaging for Israel, and which had its origins in an erroneous statement made by a member of the Sub-Commission. According to that statement, the Israeli Government had reserved solely for Ashkenazi Jews the gas masks to be distributed in the case

of possible chemical weapons attack. The representative of Syria was already convinced that that mendacious allegation was accurate. She exhorted the member of the Sub-Commission responsible for the rumour to withdraw his allegations. She expressed regret that people should be so ready to believe the worst of one another, and could not stress enough that in such cases, circumspection was essential.

46. Mr. ALFONSO MARTINEZ said he was not in the habit of making random accusations, and that it was known from reliable sources that the Israeli Government was to distribute, or had already distributed, gas masks not to the entire population, but on a selective basis. Those sources, which were many and various, were public and available to one and all. He condemned the lack of objectivity shown by some experts and the attitude of others who, in compliance with the wishes of a certain Government, were asking one of their colleagues to withdraw his assertions because they were not to the liking of the Government in question. For his part, he had no intention of withdrawing what he had said.

47. Mrs. PALLEY stressed that she was not acting on behalf of any Government, and was guided only by her own conscience. When she was mistaken, she had no hesitation in admitting it; she would do so, for example, if it were proved that reports that Cuba had used gas against UNITA in Angola were false.

48. Mr. ALFONSO MARTINEZ said he had never claimed that it was Mrs. Palley who was speaking on the orders of a Government. With regard to the alleged use of gas in Angola, he pointed out that Mrs. Palley had for the past year neither confirmed nor withdrawn her allegations, whereas she was now claiming from one day to the next that the report concerning Israel was false. He proposed that the parties concerned should get together on an informal basis, in order not to waste the Sub-Commission's time.

49. Mr. WALDEN (Observer for Israel), in a statement equivalent to exercise of the right of reply, protested at the shocking accusation made against his country by one of the members of the Sub-Commission, namely Mr. Alfonso Martínez, who had stated that the Government of Israel was preparing to distribute gas masks only to Ashkenazi Jews. He pointed out that, despite Mrs. Palley's request, the independent expert concerned had not withdrawn his remarks. Even the Israeli Minister of Defence, Mr. Aaron, had had a similar accusation made against him, and had responded that the report was false and that it was his duty to guarantee the safety of all the inhabitants of the country, including those in the occupied territories. If any State was open to criticism, it was really the State which continued to make use of chemical weapons. If an expert of the Sub-Commission spread unfounded rumours, he discredited no one but himself.

50. Mr. SACHAR, speaking on a point of order, pointed out that, under rule 45 of the rules of procedure, the right of reply was intended to enable those availing themselves of it to provide specific information, and not to engage in attacks on another country or on another member of the Sub-Commission, particularly in the latter's absence, as was the case with Mr. Alfonso Martínez, who had just left the room.

51. Mr. WALDEN (Observer for Israel), continuing to speak in exercise of the right of reply, pointed out to members of the Sub-Commission that the false allegation was part of a strategy intended to discredit Israel within the

United Nations. Criticism was legitimate, but such an accusation was slanderous. He commended Mrs. Palley for her reaction, which did honour to the Sub-Commission.

52. Mr. SADI, speaking on a point of order, said that, to his recollection, the member in question had given the Sub-Commission an account of a report he had read in the press, indicating that investigations would have to be carried out to confirm its accuracy.

53. Mrs. WARZAZI, speaking on a point of order, confirmed that she too had read the item in the press. It even appeared that the report alleging that the Israeli Government was preparing, in the event of a threat of war, to distribute gas masks only to Israeli Jews had given rise to heated controversy within Israel itself. It had even been reported that senior figures in the judiciary had protested against such a measure. She believed it was not for Mr. Alfonso Martínez, but rather for the Chairman, to ascertain whether the allegation was well-founded. It was also regrettable that Mrs. Palley should have taken a position on the matter before obtaining information confirming or refuting the report.

54. Mr. PHARAON (Observer for the Syrian Arab Republic), in a statement equivalent to exercise of the right of reply, said it was regrettable that an observer should try to distort the truth in the way the representative of the World Union for Progressive Judaism had done in his statement.

55. Mr. EIDE, speaking on a point of order, urged Mr. Pharaon to keep to the facts, and to comply with the provisions of rule 45 of the rules of procedure.

56. Mr. PHARAON (Observer for the Syrian Arab Republic), continuing his statement equivalent to the exercise of the right of reply, said that the allegation made by the representative of the World Union for Progressive Judaism, to the effect that Jews did not fully enjoy their legitimate rights in Syria, was without foundation. He referred to the report by the American journalist, John Wallace, who had devoted an entire television broadcast to the situation of Jews in Syria, and had concluded that if there were any young Jewish women still unmarried, they alone were responsible. In Syria, like everywhere else, men and women were equal in numbers, and as in many countries, notably in Western Europe, some young people preferred to delay marriage in order to continue their studies. He reminded the Sub-Commission that out of 14 women citizens of Syria of the Jewish faith who had been given permission to leave the country, 13 had returned to Syria because their American-Jewish fiancés had broken their promise of marriage.

57. He thanked Mrs. Palley for having confirmed that Syria practised no discrimination, and added that the figure of 500 unmarried Jewish women in Syria appeared excessive, in view of the fact that the entire Syrian-Jewish community numbered 5,000 persons.

58. Mrs. PALLEY, speaking on a point of order, said her remarks did not seem to have been fully understood. She had never said that Syria did not practise a policy of discrimination, but had rather urged the Sub-Commission not to keep silent so long as the Jewish women concerned had not actually left the country where they were victims of discrimination. She hoped that the observer for the Syrian Arab Republic would be able to give members of the Sub-Commission details of the date of their departure and of the emigration arrangements.

59. Mrs. KSENTINI, speaking on a point of order, said she was shocked that experts should be reproached simply for having brought to the attention of the Sub-Commission reports that had been widely circulated in the press, particularly when the reports were of such a serious nature. In her view, such action was not only a right, but a duty, incumbent upon all members.

60. She would have found the response of the observer for Israel more acceptable if he had at the same time announced that his country was prepared to comply with its obligations under the Geneva Convention relating to the protection of civilians in time of war, which required an occupying country to protect the inhabitants of territories under its control.

61. Mr. ALFONSO MARTINEZ, who had been absent when the observer for Israel had challenged him, said he reserved the right to reply at a later stage.

The meeting rose at 1.15 p.m.